

SPECIFIC CIRCUIT COURT ANALYSES¹

¹ The Subcommittee has included in this section of the Report any charts submitted by the judges for their particular circuit. Some judges did not submit comprehensive statistical charts for their circuit, but developed such caseload and other related data in their Subcommittee hearing testimony. Please note that the statistical data and court management information for each specific circuit court section varies widely in terms of quantity, age and detail, depending on what was provided to the Subcommittee.

ANALYSIS OF THE FIRST CIRCUIT

A. Number of Authorized Judges and Current Request for Additional Judges

In 1986, Congress increased the number of authorized judgeships for the First Circuit from 5 to 6 judges; however, the court had to operate with one vacancy from January 1997 to July 1998, with a total of 5 active and 5 senior judges. At a hearing in November 1997, Chief Judge Juan Torruella argued that the First Circuit's complement of judges would not be able to sustain its caseload, even if the vacancy were filled. He differentiated the First Circuit from other federal courts of appeal in terms of language, size, geographic distribution, judge to population ratio, and law. At the time of the hearing, the First Circuit requested that the remaining vacancy be filled and an additional judgeship be created. Since the hearing, the sixth judicial vacancy has been filled, but no additional judgeship has been authorized.

B. Discussion of First Circuit Caseload

The number of filings for the First Circuit increased 22%, from 1186 in 1986 to 1444 in 1997. The number of terminations increased 43%, from 974 in 1986 to 1395 in 1997. The number of pending cases increased 55%, from 698 in 1986 to 1080 in 1997. However, Judge Torruella testified in 1997 that the First Circuit has not developed "a true backlog" of cases.

In 1997, the First Circuit's caseload could be broken down to approximately 41% private civil cases, 8% civil cases, 25% criminal appeals, and 18% prisoners petitions. Prisoner petitions are not a large part of the First Circuit's caseload as compared to other circuits, because the circuit did not have a federal detention center. However, Judge Torruella speculated that the opening of a federal prison in the circuit would increase these petitions. He also indicated that the First Circuit's pro se caseload is smaller than other circuits. According to Judge Torruella, the Sentencing Guidelines have increased the circuit's caseload, while the Prisoner Litigation Reform Act has not had any real impact on their workload.

C. First Circuit Case Management

Judge Torruella testified that the Civil Appeals Management Program (CAMP) has been the most effective program that the circuit has implemented to achieve case management efficiencies. CAMP reduces the number of cases that have to be decided, and helps deal with procedural issues without having to resort to formal motions. Under this program, a CAMP attorney screens all counseled civil appeals to settle or, in the alternative, to narrow and clarify issues to be presented on appeal. The CAMP attorney also screens each appeal for jurisdictional defects. Pro se, Social Security, NLRB and administrative agency enforcement orders are all automatically set for submission.

The median time from the filing of notice of appeal to disposition of the appeal was 9.5 months in 1997, up from 8.7 months in 1996. In the First Circuit, 55.9% of appeals received oral argument in 1997, as compared to the national average of 38.7%. While 51.4% of the circuit's decisions were unpublished, most of the cases that are argued in the First Circuit received a full published opinion. Opinions are not published where the panel determines that

the decision lacks precedential value.

Court Schedule and Recess Period: The First Circuit does not have a recess period, and cases are assigned throughout the year. The circuit sits in Boston the first full week of every month, except in July and in September when it sits for two weeks. It also holds hearings simultaneously in San Juan during the first weeks of March and November. The sittings are concentrated in one or two weeks to minimize costs. Judge Torruella testified that the First Circuit was attempting to sit at least once a year in 5 other cities within the circuit to provide more access to federal justice.

First Circuit judges sit for a week per month for 10 months a year, and for two weeks at a time in the remaining two months. During a sitting week, each judge will usually sit 3 days, with 6 cases heard per day. At the end of the sitting week, each judge will normally be assigned to write 6 cases. The court also has between 3 to 7 en banc hearings a year, in which all active judges participate. Further, a panel member might write separate opinions, dissents or concurrences, even if he is not the assigned writing judge. Six times a year, the judges sit on 3-judge duty panels and consider all types of submitted appeals.

Judge Travel: According to Judge Torruella, any non-judicial travel in which judges engage plays an important part in the functioning of the judiciary. However, he did agree that such activities need to be kept within “reasonable limits.” He believed that it should be left up to the individual judge to decide whether or not to engage in such activities. In addition, Judge Torruella explained that the court has internal controls so that a judge will get his or her work done, such as a listing of judges who have taken more than 60 days to hear a case.

The GAO judicial travel study found that judges in the First Circuit took a total of 39 non-case related trips in 1995, consisting of 110 travel days of which 84 were workdays. In 1996, judges took 45 non-case related trips consisting of 118 travel days of which 89 were workdays. In the 9-month period ending September 30, 1997, judges took 34 non-case related trips consisting of 89 travel days, of which 68 were work days. This is a considerable amount of time spent on extra-curricular activities and as such, should also be factored into evaluating judgeship requests.

Use of Staff Attorneys: The First Circuit’s senior staff attorney screens all appeals for jurisdictional defects as well as cases for oral argument, and identifies and removes cases which present no significant legal issue from the oral argument list. The senior staff attorney’s office prepares draft opinions, analyzing substantive motions and complex procedural issues which are then circulated to the 3-judge panels. While other circuits may rely more heavily on their central legal staff, Judge Torruella believed the First Circuit is doing so to an appropriate extent.

Use of Visiting Judges: Visiting judges help the First Circuit manage its workload, adding what Judge Torruella characterized as a “positive and different perspective” to deciding cases. Judge Torruella also predicted that the court’s use of visiting judges would have to increase “substantially” if a seventh judgeship were not authorized.

Use of Senior Judges: The First Circuit currently has 5 senior judges who carry a “substantial partial caseload.” According to Judge Torruella, without the contribution of these senior judges, it would have been impossible for the court to keep up with its increase in caseload. As of September 1997, the 5 senior judges were hearing about 9% of the adjusted case filings per 3-judge panel for the First Circuit.

Use of Mediation Programs: The First Circuit utilizes alternative dispute resolution techniques to keep its caseload current. Judge Torruella agreed that alternative dispute resolution, “if used effectively, could help save costs by eliminating the need to create new judgeships.”

D. First Circuit Use Of Other Court Efficiencies

In addition to CAMP, which according to Judge Torruella saves the cost of one judgeship per year, the First Circuit has explored the possibility of establishing other court efficiencies. For example, the First Circuit has experimented with drafting shorter opinions in cases with simple legal issues. Some court panels review case lists for cases which can be decided without argument and with short opinions. The First Circuit has discussed reducing oral argument to the extent justice is not denied to the parties, and has considered possible appropriate lengths for publishing opinions. Ultimately, the First Circuit determined that this is an area where it is too difficult to set a rule which can be followed mathematically.

During his testimony before the Subcommittee, Judge Torruella was asked about the Ponce judicial facilities which had been criticized as unnecessary. Judge Torruella testified that Ponce is the largest city in the U.S. which does not have a permanent federal judicial presence. Also, Ponce has never had a full-time judicial officer or any clerical staff. Judge Torruella argued that the Ponce courthouse is necessary in terms of access and administration of justice for about 40% of the population of Puerto Rico. He also insisted that the Ponce courtroom is fully operational and could be fully upgraded to handle multi-defendant and complex criminal and civil cases. However, Chief Judge Cerezo of the U.S. District Court of Puerto Rico recommended that the Ponce courthouse be shut down because it was not usable and was a misuse of taxpayers’ money, and indicated that the district court had voted to close down the facility. She also pointed out that this courthouse is used only certain times a year. Judge Torruella countered that the district court was not unanimous in that request, and that the request for closure did not follow established procedures. However, as Judge Cerezo has stated, it appears that this courthouse cannot be used for criminal trials because it lacks a secure holding cell. Adding the metal detectors, holding cells and other changes to make the Ponce courthouse safe to hold criminal trials would be costly. In addition, the federal government just spent millions of dollars renovating the San Juan courthouse and judges’ offices in an attempt to meet all the needs of the circuit and district courts. It therefore appears that the District Court of Puerto Rico, as expressed by the Court’s Chief Judge, has no interest in expanding the Ponce facility and the Judicial Conference should be prepared to demonstrate the need for an expanded facility if one is recommended.

E. Conclusion

Judge Torruella argued that the Judicial Conference formula and circuit statistics justify the filling of the First Circuit's vacancy and the addition of a seventh permanent judgeship. Yet, Judge Torruella also favored small courts and keeping growth in the judiciary to a minimum. He acknowledged that the First Circuit had not developed a "true" backlog of cases, in the sense that there is not a large number of cases briefed and ready for argument, but not able to be argued due to an unavailability of judges to hear cases. In 1997, the time of 1.4 months from the date of filing the final brief to hearing or submission was the lowest in the country, and in 1994, 1995 and 1996, the First Circuit terminated more cases than were filed. While the First Circuit's median time rose from 8.7 months in 1996 to 9.5 months in 1997, it is still one of the fastest circuits in the country. In 1996, there were fewer civil cases filed than in 1991, and prisoner petitions, which are generally less complicated, constituted the greater part of the court's increase in filings. Moreover, First Circuit judges responding to the 1996 Judicial Questionnaire agreed that there was no "true" backlog at present, even though they did express some concern about preventing a backlog in the future.

Based on the comments by the judges in the First Circuit in their responses to the 1996 judicial questionnaire and Judge Torruella's hearing testimony that there is no true backlog in the First Circuit and that the caseload is manageable, and based on examination of the current needs and caseload in the First Circuit and the recent filling of the sixth judgeship position, the additional one judgeship position requested does not appear to be necessary at this time.

TABLE 1

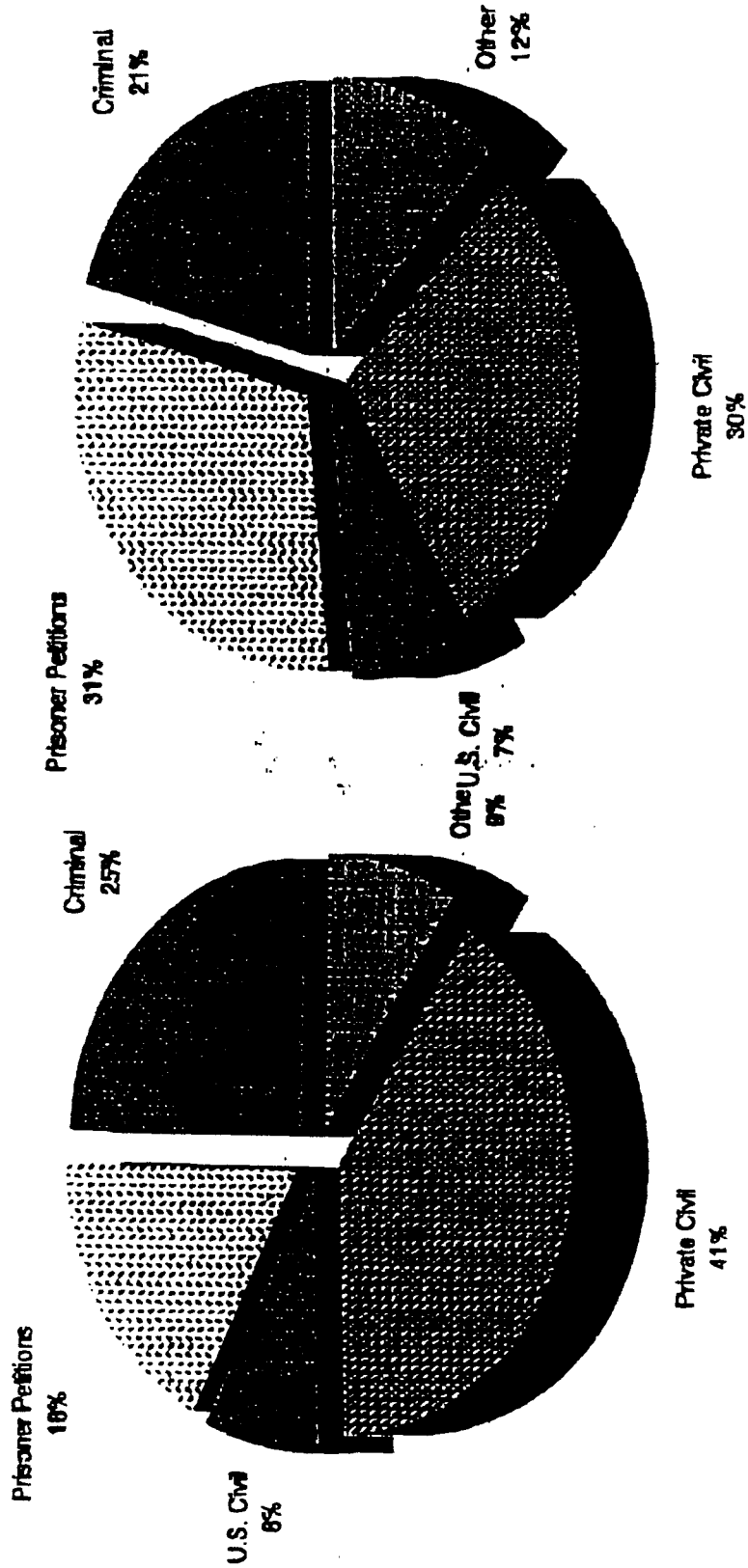
Case Activity From 1986 through 1997*

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Filed	1186	1110	1239	1287	1168	1282	1532	1417	1370	1339	1367	1414
Terminated	374	1092	1176	1307	1246	1264	1376	1365	1379	1343	1395	1395
Pending	698	716	779	759	681	734	890	956	947	951	945	1080

*For 1986 through 1996 the figures are for the 12-month period ending September 30 of each year. For 1997 the figures are for the 12-month period ending June 30, 1997.

TABLE 2

Court of Appeals Filings Comparison First Circuit vs. Nation for 1997



FIRST CIRCUIT

NATION

12-Month Period That Ended June 30